

## Case No. 6:16-cv-00062-NKM

Defendants.

Case 6:16-cv-00062-NKM-RSB Document 6 Filed 12/19/16 Page 1 of 5 Pageid#: 42

Plaintiff pled four causes of action relating to the sale of Sentry stock between The Adam Vinoskey Trust and the Plan. Compl. ¶¶ 21-38. Plaintiff's allegations focus on the price the Plan paid for Sentry's stock and the actions of the Plan's fiduciaries and seller in the stock transaction. *See id.* Plaintiff directs its causes of action at Defendants Adam Vinoskey, The Adam Vinoskey Trust, Evolve Bank and Trust, and Michael New, but directs no cause of action at Sentry. *See id.* Plaintiff's primary allegations against Sentry appear in the section titled "Parties," where Plaintiff identifies Sentry as the sponsor and Plan Administrator of the Plan and states that Sentry is a party in interest pursuant to Employee Retirement Income Security Act of 1974 ("ERISA") Section 3(14)(C) and a fiduciary pursuant to ERISA Section 3(21)(A). *See id.* at ¶ 6. The only other allegations regarding Sentry are:

- Sentry contributed funds for the Plan to purchase Sentry's stock in 2004 and subsequently made contributions to the Plan to allow the Plan to repay its loan to Sentry, *see id.* at ¶ 11;
- Sentry hired an appraiser to determine the value of its stock on an annual basis, *see id.* at ¶ 12; and
- Sentry loaned the Plan \$1,900,080 to purchase Sentry's stock in December 2010, which imposed repayment obligations upon Sentry that reduced its value and, consequently, the fair market value of its shares; *see id.* at ¶¶ 17, 18, 20.

These allegations do not relate to the price paid for Sentry's stock in the 2010 transaction or otherwise relate to the allegations in the causes of action.

## **LEGAL ARGUMENT**

Plaintiff's Complaint must be dismissed as to Sentry pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted because Plaintiff has failed to bring any cause of action against Sentry. To avoid dismissal, Plaintiff is required to plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). To meet this obligation, Plaintiff must provide grounds showing entitlement to relief, which requires "more than labels and conclusions" and "a formulaic recitation of the elements of a cause of action." *Id.* at 555 (citation omitted). Moreover, "where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—that the pleader is entitled to relief." *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009) (citing Fed. R. Civ. P. 8(a)(2)). A complaint must contain "[f]actual allegations [sufficient] to raise a right to relief above the speculative level." *See Twombly*, 550 U.S. at 555.

Plaintiff fails to meet its pleading requirement because it merely labels Sentry as a "fiduciary" and a "party in interest" without including any facts alleging that Sentry breached its alleged fiduciary duties or otherwise acted improperly. Plaintiff pled no facts that would allow the Court to infer *any* possibility of misconduct by Sentry, let alone facts that would support "more than the mere possibility of misconduct." *See Iqbal*, 556 U.S. at 679. Accordingly, the Court should dismiss Plaintiff's Complaint as to Sentry for failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6).

## **CONCLUSION**

For these reasons, Defendant Sentry requests that the Court enter an Order granting its Motion to Dismiss.

MOORE & VAN ALLEN PLLC

/s/ Alton L. Gwaltney, III

Alton L. Gwaltney, III  
Virginia Bar No. 36331  
100 North Tryon Street, Suite 4700  
Charlotte, North Carolina 28205  
Telephone: (704) 331-1008  
Facsimile: (704) 378-1908  
larrygwaltney@mvalaw.com

*Counsel for Defendants Adam Vinoskey,  
The Adam Vinoskey Trust,  
Sentry Equipment Erectors, Inc., and  
The Sentry Equipment Erectors, Inc.  
Employee Stock Ownership and Savings Plan*

**CERTIFICATE OF SERVICE**

The undersigned attorney for Sentry Equipment Erectors, Inc. does hereby certify that a copy of the foregoing **DEFENDANT SENTRY EQUIPMENT ERECTORS, INC.'S MEMORANDUM IN SUPPORT OF ITS MOTION TO DISMISS** was served upon all counsel and parties of record using the CM/ECF system, which will send notification of such filing and service, and by United States first class mail, by depositing the same in an official U.S. Postal depository, postage prepaid, and addressed to counsel as follows:

Andrea Luby  
U.S. Department of Labor  
Office of the Solicitor  
Suite 630 East, The Curtis Center  
170 South Independence Mall West  
Philadelphia, Pennsylvania 19106-3306  
luby.andrea@dol.gov

*Counsel for Plaintiff*

Alexandra B. Cunningham  
Thomas R. Waskom  
HUNTON & WILLIAMS LLP  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, Virginia 23219-4074  
acunningham@hunton.com  
twaskom@hunton.com

Scott J. Stitt (*pro hac vice anticipated*)  
TUCKER ELLIS LLP  
175 South Third Street, Suite 520  
Columbus, Ohio 43215  
scott.stitt@tuckerellis.com

*Counsel for Defendants Evolve Bank  
and Trust and Michael New*

This 19th day of December, 2016.

/s/ Alton L. Gwaltney, III  
Alton L. Gwaltney, III